IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

MOTILAL Vs. STATE OF RAJASTHAN & ORS.

(S.B.C.Writ Petition No.544/94)

Date of Order : 18th September, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.N.K.Vyas, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy.Government Advocate.

The petitioner has filed this writ petition with the prayer that he be declared as Pump Driver-II on his acquiring requisite experience from 19.9.19980 or at least from 19.9.1985 when he was declared permanent on the post of Helper -II. Alternatively, he has prayed that he "may be given post of Pump Driver against any vacant post at present or in future in preference" and further prayed that he be granted regular pay scale on the post of Pump Driver-II on the principle of "equal pay for equal work" and be paid such salary from 19.9.1980.

The facts as they have disclosed in the memorandum of writ petition are that petitioner was initially appointed by order dated 8.9.1975 as Helper -II @ Rs.60/- per month in the pay

scale of Rs.60-165-2-85. The petitioner joined as such on 19.9.1975 at Shergarh Pump Station . He was granted semi-permanent status w.e.f. 19th September, 1977 under Rule 3(3) of the Rajasthan Workcharged Employees Service Rules, 1964 (for short "the Rules of 1964") and was then granted permanent status on the said post vide order dated 6th September, 1990. Although his nomenclature was mentioned on record as Helper-II but in fact he was discharging the duties of Pump Driver-II. On the question of qualification and experience of the post of Pump Driver-II, the petitioner has submitted that prior to 19th September, 1985 when he was declared permanent, he was governed by the Rules of 1964. Chapter 5 of the P.W.D. Manual part 1 contains the procedure and rules for promotion of work charged employees. According to such rules, it prescribes that any incumbent who is having 5 years experience on the post of Helper-I and II may be considered for promotion on the post of Pump Driver II. Since the petitioner completed experience of five years on the post of Helper-II on 19.9.1980 he was fully eligible for promotion on the post of Pump Driver-II. He was declared permanent by order dated 6th September, 1990 w.e.f. 19th September, 1985. Schedule appended to Rajasthan Engineering Subordinate Service (Public Health Branch)Rules, 1967 (for short "the Rules of 1967") provides that any employee who has put in 5 years service as Pump Driver-III or Helper in pumping

section with total experience of ten years out of which three years experience as Helper or Pump Driver-III may be considered for the post of Pump Driver-II. Accordingly, the petitioner should be held eligible for promotion and the respondents be directed to treat him as Helper-II and pay him salary of that post on principles of "equal pay for equal work". It has been argued that after the petitioner was made permanent, he became member of permanent service and therefore entitled to new pay scale admissible of regular employees. Since the petitioner has been regularly discharging the duties on the post of Pump Driver, he is entitled to all those benefits which are attached to the said post.

The respondents have contested the writ petition and filed reply in which they have categorically denied that the petitioner has ever discharged or was allowed to discharge the duties of Pump Driver-II. He was actually working on the post of Helper-II and he never worked on the post of Pump Driver-II. There was therefore no question of granting him the benefit of the post of Pump Driver-II. The petitioner was mainly appointed as Helper-II and he was posted at different places under supply schemes to help fitters and operation of the tube wells. From 1.5.1986 to 5.7.1991, the petitioner worked with fitter party to help at WSS Kichan and from 6.7.1991 his posting was at WSS

Mokheri for just operating the tube well. It has been argued that under the Engineering Subordinate Rules qualification for direct recruitment on the post of Pump Driver-II is I.T.I. passed in trade or VIIIth passed with five years experience of the trade. The petitioner is only VIth passed and therefore, he was not eligible for direct recruitment. It has been submitted that since, the petitioner has acquired the experience of ten years , he eligible for being considered for promotion on the post of Pump Driver-II, his case shall be considered by D.P.C. on availability of vacancy. The respondents also argued that whether or not the petitioner actually worked on the post of Helper-II is essentially a disputed question of fact which cannot be decided in writ proceedings. The petitioner can raise an industrial dispute on this issue which is required to be proved on the basis of evidence led by the parties.

I have heard Mr. N.K.Vyas, learned counsel for the petitioner and Mr.Rameshwar Dave, Dy.Government Advocate for the respondent and perused the record.

While on the one hand, the petitioner has asserted that he had all along worked on the post of Pump Driver-II whereas in records, he was being shown as Helper-II. On the other hand, the respondents have denied this contention of the

petitioner by asserting that he was merely appointed as Helper -II and he was posted at different places under supply schemes to help fitters and operation of the tube wells. They have given the details of his postings as Helper-II. This essentially becomes a disputed question of fact which cannot be appropriately gone into by this Court in its writ jurisdiction. Moreover, even if it is assumed though has not been proved before this Court that the petitioner was in between allowed to work as Helper-II, that by itself cannot make the petitioner entitled to claim regularisation on that post and a declaration of permanency of that post. The principles of equal pay for equal work in this case could have been applied only if it was satisfactorily proved that the respondents have been taking work of Helper-II from him which in the present case is being seriously contested by the respondents. The respondents however have admitted that the petitioner was eligible for being considered to the promotion and would be considered on availability of vacancy. Learned counsel for the petitioner has not been able to pointedly confirm whether or not the petitioner has since been promoted. The fact remains that when the petitioner was accepted as eligible for promotion having already acquired the experience of ten years at the time when the writ petition was filed, that is the only way by which he can come to occupy the post of Helper-II as and when the respondent consider his case for promotion subject to availability

of post if not already so considered and promoted.

In the circumstances, I do not find any good ground to interfere in the writ petition. The same is hereby dismissed. There shall be no order as to costs.

(**MOHAMMAD RAFIQ),J.**